APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATIONAL FAMILY INSURANCE COMPANY, a Minnesota Corporation, Plaintiff,	)	
vs.	)	NO. 70 C 2346
EXCHANGE NATIONAL BANK OF CHICAGO, a National Banking Association, Defendant.	)	

AFFIDAVIT IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

Robert W. Gettleman, being first duly sworn, on oath deposes and says:

1. I am one of the attorneys for the above-named defendant. I have personal knowledge of the matters herein referred to, and make this affidavit in support of defendant's motion to dismiss.

2. The following is a list of newspaper articles, with their Exhibit numbers as attached hereto, the dates in which they appeared in their respective publications, and a brief description of the relevant contents thereof, which newspaper

EXHIBIT 1.

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articles were copied by me from the newspaper files of the St. Paul, Minnesota Public Library and the Minneapolis, Minnesota Public Library, as well as from the files of the United States District Court for the District of Minnesota (Case No. 3-66-7Cr, United States v. Kitzer, et al.), which research took place on the 26th day of October, 1970:

Exhibit Number	Date	Source	Description
2.	April 12,1965[1].	Trib[2].	Two Republican legislators charge Insurance Commissioner Magnusson with failure to act. Mentions disbursements of $1 million from American Allied to an "unauthorized Chicago Bank account."
3.	May 29	Trib	Mentions transfer of $1 million to a Chicago bank account unauthorized by American Allied directors.
4.	June 13	Trib	Mentions $1 million in Chicago bank account.
5.	June 19	Star[3]	Magnusson testifies that the Kitzers "saved" National Family by "100% reinsuring its claims back to January 1, 1963."
6.	June 23	Star	Testimony that secret transfer of $1.1 million to Chicago bank and subsequent withdrawal, was satisfactorily explained.

1. All dates hereafter refer to 1965.
2. "Trib" signifies the Minneapolis Tribune.
3. "Star" signifies the Minneapolis Star.

Exhibit Number	Date	Source	Description
7.	June 24	Dispatch[4]	Mentions deposit of $1.1 million in a Chicago bank, not shown on American Allied's books; insurance examiner S.C.Haugen testified that "the $1.1 million dollar bank account was in the Exchange National Bank of Chicago."
8.	June 24	Trib	Same story as above, but mentions only "a Chicago bank," not by name.
9.	June 28	Star	Testimony that the $1.4 million of American Allied funds "transferred to a Chicago bank account" did not affect company's solvency.
10.	June 29	Star	Testimony that Lord was especially interested in a $1.1 million account in a Chicago bank, representing funds from American Allied to Kitzer.
11.	July 12	Star	Story of Chicago suit by Illinois Attorney General against Kitzers, charging that Kitzer Sr. took $295,000 from Bell Casualty and $295,000 from Bell Mutual "and pledged the securities to the Exchange National Bank of Chicago to cover personal loans."
12.	July 20	Star	Reports Illinois insurance department claim that Kitzer Sr. "pledged securities belonging to [the Bell companies] as collateral for personal loans at a bank."
13.	July 24	Trib	Mentions funds "shifted between Twin Cities and Chicago,Ill. banks."

4. "Dispatch" signifies the St. Paul Dispatch.

Exhibit Number	Date	Source	Description
14.	August 5	Star	Story on appointment of receiver: order recited that American Allied's home office at 275 E. 4th St., St. Paul, was valued at $600,000 but worth only $440,000.
15.	August 5	Trib	Same story as above.
16.	August 8	Trib	Mentions the shift of $1.1 million from St. Paul to Chicago, plus the $200,000 to a Chicago bank (apparently Bank of Clearing).
17.	August 13	Trib	Federal Grand Jury subpoenas local bank records plus "two officials of a Chicago, Ill., bank and a New York, N.Y., investment firm."
18.	August 21	Star	Story of a Chicago woman's suit to foreclose on mortgage of American Allied's home office in St. Paul; "the mortgage originally was recorded in the name of Exchange National Bank of Chicago." Bonhiver indicates he will contest validity of the mortgage as well as the foreclosure.
19.	September 10	Trib	Story of Illinois court's liquidation order of the two Bell companies; mentions the $600,000 of assets pledged to a bank on a loan
20.	September 14	Star	Story of Kitzer's challenging a Grand Jury subpoena -- Lord wants to find out what happened to the proceeds ($247,500) of mortgage of home office property; "In an effort to determine what became of additional assets of American Allied the Federal Grand Jury subpoened five Chicagoans. They are: Maurice Nettel, a vice-president and three tellers of the Exchange National Bank of Chicago."

Exhibit Number	Date	Source	Description
21.	September 17	Star	Story of Bonhiver's suits to guard assets -- describes in detail the suit to set aside mortgage on home office and names Exchange National Bank of Chicago as a defendant: "It is alleged that the bank paid over the money to Kitzers knowing that they were borrowing it for 'their own personal use.' It also is claimed that the Chicago Bank assigned the mortgage to Mrs. Brown while proceedings were pending before [Judge] Pearson to have the company declared insolvent."
22.	September 18	Trib	Same story and detail as above.
23.	September 18	Pioneer[5]	Same story and detail as above.
24.	September 21	Dispatch	Caption: "Jury due to hear Chicago Banker" -- Story of John Carroll's pending appearance before grand jury; states that he "could not be located for service of the subpoena in August. Mentions Exchange National Bank by name.

3. Attached hereto as Exhibit 25 is a true and correct copy of the counterclaim filed by National Family Insurance Co. in the United States District Court for the District of Minnesota, Case No. 3- 68 Cr. 24, attached to its Motion to Intervene in that case.

5. "Pioneer Press" signifies the St. Paul Pioneer Press.

4. Attached hereto as Exhibit 26 are copies of pages from Best's Insurance Reports for the years 1964 and 1965.

Further affiant sayeth not.

Robert W. Gettleman
Robert W. Gettleman

Subscribed and sworn
to before me this 9th
day of December, 1970.

Dorothy E Lewis
Notary Public

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APPENDIX B

Judiciary Act of 1865, §4, 13 Statutes at Large 501

And be it further enacted. That issues of fact in civil cases in any circuit court of the United States may be tried and determined by the court without the intervention of a jury, whenever the parties, or their attorneys of record, file a stipulation in writing with the clerk of the court waiving a jury. The finding of the court upon the facts, which finding may be either general or special, shall have the same effect as the verdict of a jury. The rulings of the court in the *court* [cause] in the progress of the trial, when excepted to at the time, may be reviewed by the supreme court of the United States upon a writ of error, or upon appeal, provided the rulings be duly presented by a bill of exceptions. When the finding is special, the review may also extend to the determination of the sufficiency of the facts found to support the judgment.

APPENDIX C

United States Supreme Court Rule 19

Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

APPENDIX D

Rule 12(b), Federal Rules of Civil Procedure

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

APPENDIX E

Rule 42(b), Federal Rules of Civil Procedure

Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claims, counterclaim, or third-party claim, or of any separate issue, or of any claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

APPENDIX F

Rule 43(e), Federal Rules of Civil Procedure

Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

APPENDIX G

Rule 46, Federal Rules of Civil Procedure

EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.